OCT 16 1998

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review Reform of the International Settlements Policy and Associated Filing Requirements	)))	IB Docket No. 98-148
	)	
Regulation of International Accounting Rates	))	CC Docket No. 90-337

REPLY COMMENTS OF CABLE AND WIRELESS USA, INC.

Rachel J. Rothstein
Vice President for Regulatory and
Government Affairs
Paul W. Kenefick
Regulatory Counsel
CABLE & WIRELESS USA, INC.
8219 Leesburg Pike
Vienna, VA 22182

Dated: October 16, 1998

No. of Copies rec'd 0+4
List ABCDE

TABLE OF CONTENTS

SUMMARY

Cable & Wireless USA, Inc. ("C&W USA") submits the following Reply Comments which generally support the Commission's deregulatory and streamlining suggestions in this Notice of Proposed Rulemaking ("NPRM"). C&W USA notes that several of the Commission's proposals received widespread support from those parties that submitted Comments, including the proposals to lift the International Settlements Policy for nondominant carriers on WTO member country routes and for all carriers on liberalized routes. Also, the record indicates strong support for eliminating the filing and public notice requirements associated with the ISP.

C&W USA also strongly urges the Commission to reexamine its benchmark settlement rate condition as it applies to those carriers and routes where the ISP is no longer applied. The Commission should lift this restriction due to the inability of nondominant carriers or any carrier on a liberalized route to effectuate an anticompetitive price squeeze with its foreign carrier affiliate.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review Reform of the International Settlements Policy and Associated Filing Requirements	)))	IB Docket No. 98-148
	)	
Regulation of International Accounting Rates	))	CC Docket No. 90-337

REPLY COMMENTS OF CABLE AND WIRELESS USA, INC.

Cable & Wireless USA, Inc. ("CWUSA") hereby submits the following Reply Comments to the above entitled Notice of Proposed Rulemaking ("NPRM"). As with the Commission's other deregulatory and streamlining efforts in its 1998 Biennial Regulatory Review, C&W USA applauds the Commission in taking the lead on these issues and proposing to lift many burdensome and unnecessary regulations from U.S. international carriers. Deregulation of the international telecommunications market will increase competition and lower the costs of providing service, benefiting both carriers and consumers. Moreover, these proceedings provide an example to other nations that telecommunications quality increases and costs decrease when micro-management is replaced by competition and market based rates.

In these Reply Comments, C&W USA discusses the benefits of eliminating the International Settlements Policy ("ISP") from agreements with nondominant foreign carriers and for all carriers on routes where the Commission has authorized the transmission of switched traffic via international private lines interconnected to the public switched network at either or both ends, commonly referred to as International Simple Resale ("ISR"). C&W USA also supports the lifting of the filing and public disclosure requirements used, in part, to enforce this policy. Further, C&W USA strongly urges the Commission to consider lifting the benchmark settlement rate condition for agreements with affiliated nondominant carriers due to these carriers' inability to effectuate a price squeeze and the chilling effect this condition has on competition with dominant carriers.

I. THERE IS OVERWHELMING SUPPORT FOR THE COMMISSION TO ELIMINATE THE INTERNATIONAL SETTLEMENTS POLICY AND RELATED FILING REQUIREMENTS FOR NONDOMINANT CARRIERS AND ON AUTHORIZED ISR ROUTES.

A clear majority of those parties submitting comments in this proceeding support the Commission's proposals to eliminate the ISP and related filing requirements in certain situations. Those carriers that supported the Commission's proposals recognized the ISP was developed for a situation where multiple U.S. carriers negotiated settlement and return traffic arrangements with a de jure monopoly correspondent carrier in the destination country. The ISP was developed in the 1930s to protect U.S. carriers from the monopoly foreign carrier abusing its monopoly power in an anticompetitive manner, commonly referred to as "whipsawing." The international telecommunications market has changed significantly, with competitive carriers replacing monopolies and competition substituting regulation. The Commission correctly realizes that the ISP was a regulatory mechanism that may have been necessary in the 1930s, yet today can actually harm carriers and consumers by adversely affecting competition.

A. THE COMMISSION SHOULD ELIMINATE THE ISP FOR NONDOMINANT CARRIERS.

A clear majority of the commenters expressed support for the Commission's proposal to eliminate the ISP for agreements concluded with foreign carriers from WTO member countries that lack market power on the relevant route.[1] The Commission itself has recognized that without market power, a carrier cannot whipsaw or otherwise discriminate against U.S. carriers,[2] and since the ISP was developed to prevent whipsawing, the ISP no longer serves a valid purpose where whipsawing is not a realistic concern.[3] On these competitive routes, if a U.S. carrier is not satisfied with the arrangement that a nondominant foreign carrier proposes, the U.S. carrier would have the option of negotiating with another carrier. Under these circumstances, the ISP is no longer necessary to protect the interests of U.S. carriers and ratepayers.[4]

C&W USA urges the Commission to expand the elimination of the ISP for nondominant carriers to non-WTO member nations as well. As previously illustrated, the ISP was developed to prevent anticompetitive behavior which nondominant carriers cannot effectuate due to their lack of market power. If the nondominant carrier does not have the necessary market power, then it cannot whipsaw U.S. carriers, regardless of the destination country's membership in the WTO.

---

[1] Bell South at 2; BTNA at 2; Comptel at 6; Deutsche Telekom at 4; GSA at 4; GTE at 4; Level 3 at 2; MCI at 2; ntta.com at 5; Qwest at 2; RSL USA at 5; SBC at 7; Sprint at 3; Telfonica at 2; Telia at 5.

[2] Qwest at 2, ftnt. 4 (citing several Commission orders recognizing that whipsawing could only be accomplished by carriers that have market power).

[3] Qwest at 2.

[4] Sprint at 3.

B. THE ISP SHOULD BE ELIMINATED FOR ALL CARRIERS ON COMPETITIVE ROUTES.

A majority of those parties submitting comments also supported the Commission's proposal to eliminate the ISP for arrangements with all foreign carriers, including dominant carriers, on WTO member routes where the Commission has authorized International Simple Resale.[5] As CompTel discussed in its comments, on those routes where ISR is permissible, a U.S. carrier may already route a substantial percentage of its facilities-based and resold switched minutes pursuant to ISR arrangements. Retaining the ISP in such circumstances would appear to serve no useful purpose.[6] ISP disclosures by the dominant carrier on these routes could result in the dominant carrier acting as a de facto price leader, possibly stagnating competitive pricing agreements.[7] Where ISR is permissible, competition, not regulation, will ensure that U.S. carriers and consumers are not harmed by any potential anti-competitive behavior of foreign carriers with market power.

In this case, as with the Commission's proposal to eliminate the ISP for all arrangements with nondominant carriers on WTO member nation routes, the Commission should discard the ISP to all routes where ISR is permitted, regardless of WTO membership. In order for U.S. carriers to send international switched traffic interconnected to the public switched network at either or both ends on a WTO member nation route, the applicant must demonstrate that 50% of the U.S. traffic is terminated at

[5] Bell South at 2; BTNA at 7; CompTel at 6; Level 3 at 2; ntta.com at 5; Qwest at 4; RSL USA at 5; SBC at 8; Telfonica at 5; Telia at 5.
[6] CompTel at 6-7.
[7] See GTE at 6.

or below the applicable benchmark rate or the destination country provides U.S. carriers "equivalent" resale opportunities.[8] Since a non-WTO member nation must satisfy both ISR criteria, the Commission should be confident that competitive pressures exist in this market and ISP oversight is no longer necessary, even for arrangements with the dominant carrier.

The Commission should not employ a more stringent standard to determine when the ISP should be lifted for all carriers on a particular route as suggested by several commenters. First, the best practices rate should not be used as a standard for lifting the ISP on a particular route. The best practices rate was established in the Benchmark Order[9] as a remedial measure to be used when the Commission was presented with compelling evidence of market distortion, and it was not intended to be used as a target rate for any route. The best practices rate is not demonstrative of all routes and it incorrectly assumes that termination costs are the same in all countries.[10] Further, it does not consider other essential factors in a proper settlement rate estimate, such as teledensity, economic development, etc. Second, the Commission should not require ISR reciprocity as a factor in determining whether to lift the ISP for all carriers on certain routes. This is an overly restrictive mechanism which could be in violation of the Most Favored Nation clause of the GATS Article II,[11] and, as noted by several commenters, U.S. carriers are already avoiding the ISP on these routes by using ISR where permissible.

---

[8] 47 CFR §63.18(e)(4).

[9] International Settlements Rates, Report and Order ("Benchmark Order"), 12 FCC Rcd 19,806 (1997), recon. and appeal pending.

[10] See infra Part II of these Reply Comments for an example of how termination rates are not uniform and often cannot be controlled by one carrier.

[11] Deutsche Telekom at 5.

C. THE ASSOCIATED FILING REQUIREMENTS SHOULD NOT BE REQUIRED WHEN THE ISP IS INAPPLICABLE.

Most commenters supported the Commission's proposal to eliminate the associated filing requirements in those situations where the ISP no longer applies.[12] The Section 43.51 contract filing requirement and the Section 64.1001 accounting rate filing requirement have been established, in part, as mechanisms to enforce the ISP and maintain regulatory oversight of accounting rate arrangements.[13] To the extent the ISP does not apply, nor should the contract filing and public disclosure requirements of these sections. There are numerous benefits to not requiring these contracts be filed and made publicly available, including the administrative burden these requirements place on the Commission and the carriers that must file. Further, contract privacy will encourage U.S. and foreign carriers to negotiate more innovative, cost-effective agreements,[14] whereas public disclosure of accounting rates results in price signaling and oligopolistic pricing trends.[15]

II. THE COMMISSION SHOULD LIBERALIZE ITS BENCHMARK POLICY IN THOSE CASES WHERE THE INTERNATIONAL SETTLEMENTS POLICY DOES NOT APPLY.

On those routes where the Commission does not apply the ISP and its filing requirements to arrangements with nondominant carriers or to all carriers, the

[12] BTNA at 9; CompTel at 8; GTE at 10; Level 3 at 4; ntta.com at 5-6; Qwest at 6; RSL USA at 5; SBC at 9; Sprint at 4; Telefonica at 7.
[13] NPRM at ¶21.
[14] Level 3 at 5.
[15] SBC at 9.

Commission should liberalize its benchmark policy. In the Benchmark Settlements Rate Order,[16] the Commission conditioned U.S. carriers' facilities-based licenses on affiliated routes to the foreign affiliate offering U.S. carriers a settlement rate which was at or below the applicable benchmark rate.[17] This condition precludes the exercise of facilities-based authority on the route regardless of the foreign affiliate's market power or the degree of influence the U.S. carriers has over the foreign affiliate. In an Order released in March 1998, the Commission recognized the benchmark settlement rate condition as included in the August 1997 Order could have a detrimental effect on competition when it issued a temporary stay to this condition as it applies to Section 214 certificate holders that were authorized to provide service prior to January 1, 1998.[18] The Commission should use this proceeding to make this stay permanent and should expand this exemption to include all arrangements where the ISP is no longer applicable, regardless of when the 214 certificate was granted.

In this proceeding, C&W USA and BT North America, Inc. ("BTNA") both requested the Commission address the applicability of the benchmark condition on routes where the ISP does not apply to arrangements with nondominant carriers. C&W USA also requested the Commission eliminate this requirement on routes where the ISP is not applied to arrangements with any carrier, including dominant carriers. BTNA correctly illustrates the conflict between the Commission's reliance on competition alleviating the need to apply the ISP to nondominant carriers and the restriction placed on possible nondominant competitors by the benchmark condition. Applying the condition to

---

[16] Benchmark Order, supra n. 9.
[17] Id. at ¶¶207-231.
[18] International Settlements Rates, Order, released March 30, 1998.

nondominant carriers effectively restricts these carriers and their U.S. affiliates from providing facilities-based competition, benefiting the dominant carriers by maintaining the status quo.[19]

BTNA's argument that nondominant carriers infrequently have control over the international settlement rates they offer is correct and can be clearly demonstrated by C&W USA's situation on the U.S.-Philippines route. In this case, C&W USA is affiliated with a nondominant international gateway operator in the Philippines, ETPI. ETPI is one of eleven carriers competing for approximately eight percent of the international market in the Philippines. PLDT remains the dominant domestic and international carrier, dictating international accounting rates and domestic access costs. When C&W USA received its license to provide facilities-based service on this route, it was conditioned on ETPI, its nondominant affiliate, reducing its settlement rate to the applicable benchmark rate, 19 cents per minute.[20] However, while ETPI charges 41 cents per minute as a settlement rate, it must pay a domestic interconnect charge directly to PLDT which averages 36 cents per minute and can be as high as 43 cents per minute for some parts of the nation. Thus, in order for ETPI to enter into a correspondent relationship with C&W USA and provide facilities-based competition to PLDT, ETPI would have to charge a settlement rate which is approximately 47% below its average domestic termination charge.

In this proceeding, the Commission should remove the benchmark settlement rate condition for arrangements with nondominant affiliated carriers and for any arrangement where the ISP does not apply to all carriers. First, as demonstrated by the C&W USA -

---

[19] BTNA at 5.

[20] Cable & Wireless, Inc., 13 FCC Rcd 845 (1998), at ¶19.

ETPI example, nondominant carriers often do not control their settlement costs and are unable to effectuate a price squeeze. In the Benchmark Order, the Commission defined a price squeeze as a strategy of predation that would involve the foreign carrier setting "high" (above cost) international settlement rates while its U.S. affiliate offers "low" prices for domestic IMTS services in competition with other carriers.[21] However, in many markets, nondominant carriers do not control domestic interconnection costs and often must establish settlement rates dictated by the regulator or the dominant carrier. Control of international settlement rates and related termination costs at the foreign end is an essential element needed to engage in an anticompetitive price squeeze. Without this control a potential price squeeze is inconceivable.

Second, the Commission's rules are retarding competition on routes where U.S. carriers are precluded from exercising their facilities-based authority. In this NPRM, the Commission has recognized the benefits of competition and has proposed eliminating the ISP for arrangements with nondominant carriers and all carriers on certain routes due to the diminished threat of whipsawing. On the other hand, the Commission's benchmark condition effectively restricts nondominant carriers in foreign markets from providing the necessary facilities-based competition that results in a competitive marketplace where settlement rates are market based and the threat of whipsawing is diminished. The most effective method to fostering vigorous competition is to lift this restriction and encourage nondominant carriers to engage in facilities-based competition with the dominant carrier, particularly since nondominant carriers clearly do not have the same incentives or ability to engage in the predatory behavior the Commission seeks to prevent.[22]

---

[21] Benchmark Order, supra n. 9, at ¶208.
[22] BTNA at 6.

III. CONCLUSION

C&W USA applauds the Commission for the pro-competitive and deregulatory proposals discussed in this NPRM. The Commission should issue an Order which eliminates the ISP on arrangements with nondominant carriers and for arrangements with all carriers, including dominant carriers, on routes where ISR is authorized, regardless of whether the destination country is a member of the WTO. The related filing and public disclosure requirements should likewise be ruled inapplicable where the ISP no longer applies. Further, the Commission should use this proceeding to exempt arrangements with affiliated nondominant carriers and all arrangements on an ISR authorized route from the benchmark settlement rate condition.

Respectfully Submitted,

CABLE & WIRELESS U.S.A., INC.

By: Rachel J. Rothstein
Vice President for Regulatory
and Government Affairs
Paul W. Kenefick
Regulatory Counsel
8219 Leesburg Pike
Vienna, VA 22182
703 905 5785

Dated: October 16, 1998

CERTIFICATE OF SERVICE

I, Theresa M. Caban, hereby certify that I have caused copies of the foregoing "Reply Comments of Cable & Wireless USA, Inc." to be served this 16th day of October 1998, by first class mail, postage prepaid to the following:

Theresa M. Caban

Theresa M. Caban

Regina M. Keeney
Chief, International Bureau
Federal Communications Commission
Room Number 800, Stop Code 0800
2000 M Street, NW
Washington, D.C. 20554

Diane J. Cornell
International Bureau
Federal Communications Commission
Room Number 800, Stop Code 0800A
2000 M Street, NW
Washington, D.C. 20554

Troy Tanner
International Bureau
Federal Communications Commission
Suite 800
2000 M Street, N.W.
Washington, DC 20554

Douglas Klein
International Bureau
Federal Communications Commission
Suite 800
2000 M Street, N.W.
Washington, DC 20554

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036

Deputy Assistant Secretary of
Defense (Telecommunications)
Office of the Assistant Secretary
of Defense
Pentagon, Room 3E160
Washington, D.C. 20401

Vernon McConnell - W36
Director
National Security Agency
Fort George G. Meade, MD. 20755

Earl Barbely
Office of International Communications
Policy
Department of State
21st and C Streets, NW - # 5824
Washington, D.C. 20520

Carl Wayne Smith, Esq.
Acting Chief Regulatory Counsel
Defense Communications Agency
Washington, D.C. 20305-2000
Attention: Code 115

The Hon. Clarence Irving
Assistant Secretary of Commerce
National Telecommunications and
Information Agency
14th & Constitution Ave., NW
Room H 4717
Washington, D.C. 20320